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Please find below and/or attached an Office communication concerning this application or proceeding.

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 20060805

Application Number: 09/648,532
Filing date: 08/28/2000
Appellants: Dan EMODI, et al.

Daniel V. Williams (Reg. no. 45,221)
For Appellants

EXAMINER'S ANSWER

MAILED

SEP 08 2006

This is in response to appellants' brief on appeal filed on 05/17/2006.

GROUP 3600

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

There is another related appeal (CIP S.N. 09/861,531), and there is no additional appeal or interference before the Board of Appeals and Interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in

the brief is correct.

(5) *Summary of Invention*

The heading “SUMMARY OF THE CLAIMED SUBJECT MATTER” should be changed to the heading “Summary of the Invention”.

(6) Issues

The appellant’s statement of the issues in the brief is correct.

(7) Grouping of Claims

There are 3 pending independent apparatus claims 1, 59, and 60 are pending; pending dependent claims 2-28, 57-58, and 61 are all depend on claim 1. They all claim an apparatus for storing information.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

- Bro (US Pat. 5,722,418);
- Foladare et al. (US Pat. 6,343,115);

- Ellis (US Pub. 2003/0188313);
- Barbara (US Pat. 5,926,789);
- Aktas et al. (US Pat. 6,459,776);
- Stokes (US Pat. 4,870,515).

(10) **Grounds of Rejection**

On 5/31/2005 claims 1, 59, and 60 were rejected on 35 USC 103(a); NOT on 35 USC 102(b) as shown on page 9 of the Appeal Brief.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10.1. Claims 1, and 57-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418).

They are directed to an apparatus having a telephony platform having a memory that storing multimedia information; i.e., storing sounds/voices/music track(s).

Bro sufficiently meets that claimed limitations by teaching an interactive apparatus for storing predetermined multimedia information (see Bro, Fig.1) according to a client's command, comprising:

a telephony platform (see Bro, Fig.1 refs. 24, 18 & col.6 lines 5-7); and

a storage location coupled to said telephony platform, wherein said storage location stores predetermined multimedia information (see Bro, Fig.1, ref.12 “CLIENT DATABASE 12”).).

Dependent claim 57 further defines components of a telephonic platform: means for managing (i.e., a microprocessor/controller), means for storing message (i.e., a storage device: CD ROMs), a means for converting signals for a proper format (being install in Bro’s apparatus as a build-in component), and a means for generating control signals to input to a telephonic platform (i.e., signals from “CLIENT DTMF TELEPHONE SET 26” to control “TELEPHONE NETWORK 24”. Please note that Bro does suggest about: means for managing “COMPUTER 16”, means for storing messages “RECORDING DEVICE 46”, means for converting electrical signals “DIGITAL/TELEPHONE TONE SIGNAL CONVERVER 18”, and means for generating control signals (i.e., Bro teaches about a converter to converting a signal generating from a telephone keypad in Fig.1 “DIGITAL/TELEPHONE TONE SIGNAL CONVERTER 18” (please also note that because this is an apparatus claim, Bro’s means clearly have capabilities to perform essential tasks as claimed).

For dependent claim 58, Bro suggests about interconnections among components of Fig.1’s apparatus (i.e., electronics/electrical paths between means for managing (with a COMPUTER 32), means for storing messages (in a DATABASE 12), means for converting (DIGITAL/TELEPHONE TONE SIGNAL CONVERTER 18), and means for generating control signals (FROM/TO COMPUTER 16) – these features are fundamental components/paths/buses in electronic circuits (see Bro, Fig.1 – please note that claiming a high-speed backbone to interconnect means is in Bro’s configuration(s)).

Bro does not intent to use his apparatus for storing selected music/video track(s) for commercial downloading multimedia information as current well-known practices.

However, this claim is directed to an apparatus comprising physical components to make-up that apparatus's structural configuration; therefore, Bro's apparatus clearly could be used for storing selected music/video tracks.

It would have been obvious to one with ordinary skill in the art at the time of the invention to implement Bro's apparatus in handling multi-media signals (voice/text/video) since Bro's apparatus is clearly capable of selecting a particular environment for a user (i.e., recording a selected music track); the motivation is providing an apparatus that can perform commercial downloading music in different environment.

10.2. Claims 2, 25-28, and 57-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), in view of Foladare et al. (US Pat. 6,343,115).

The rationales and reference for a rejection of claim 1 are incorporated.

A. Re. to claim 2: Foladare et al. also teach about:

- a second storage location coupled to said first telephony platform, wherein said first telephony platform receives a multimedia command from an access device of a user, (see Foladare et al., Fig.1, ref. 116, and the abstract), wherein said first storage location and said second storage location store multimedia information, wherein a first multimedia portion of said predetermined multimedia information is stored in said first storage location and a second multimedia portion of said predetermined multimedia information is stored in said second storage location, said first telephony platform selectively reproduces one of said first multimedia portion and said second multimedia portion as a selected multimedia portion based on said at

least one multimedia command, and wherein said first telephony platform outputs said selected multimedia portion to said access device.

It would have been obvious to one with ordinary skill in the art at the time of the invention to implement Bro's apparatus with Foladare et al.'s ideas for using a second storage device to store a second multimedia portion because this clearly defines a separate and unique role for a different storage device in an apparatus.

B. Re. to claim 57-58: Foladare et al. further describe functional components that make up claimed apparatus – those claimed limitations read-on the functions of Foladare et al.'s system (i.e., functions done by Foladare's microprocessor, memory devices, and a certain software to perform those functions; Foladare et al. also provide a “high-speed” connection in their system (please note that there is no clarification of a definition for “high-speed” in the claim – this is a term-of-degree to be compared to “a standard speed” that is not revealed).

C. As to claim 25: The rationales and reference for a rejection of claim 2 are incorporated.

Foladare et al. further teach a system/an apparatus that having capabilities of receiving/sending an information command; and wherein a telephony platform outputs a message to access devices (see Foladare, Fig.1).

It would have been obvious to one with ordinary skill in the art at the time of the invention to combine Bro, and capabilities of Foladare's system in handling multi-media signals (voice & text/video) since Foladare further clearly teaches a system to receive a voice signal, storing/saving it in database, converting/transforming it to an understandable/readable format corresponding to what Foladare's system design, and outputting/forwarding said (converted)

understandable/readable signals – this is merely transmit/receive capabilities of an electronic system.

D. As to claim 26: The rationales and reference for a rejection of claim 2 are incorporated.

Foladare et al. also teach an apparatus that having capabilities of an access command comprises a multiple user session command, and wherein a platform connects different users (see Foladare, Fig.1); therefore, the combination of Bro and Foladare et al. provide more flexibilities/conveniences to an apparatus for ordering a selection of music/video tracks.

Claim 26 phrases: “with access devices of other users who are interested in topics relating to said selected multimedia portion so that said user and said other users can communicate in a multiple user session”, the examiner respectfully submits that a claim directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). When interpreting functional language, if the prior art is capable of performing the claimed function “even if not directly disclosed”, it anticipates. *In re Schreiber*, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

The examiner interprets claim 26’s limitation as a telephony platform that serves multiple users with interactive capabilities.

E. As to claims 27-28: The rationales and references for a rejection of claim 26 are incorporated.

Foladare et al. also teach a telephone party line in an Internet environment for a multiple-user (see Foladare, Fig.1 – please note that it is not inventive to claiming a feature of a telephone party line).

Bro and Foladare et al. do not disclose that a multiple-user session corresponds to a chat room.

However, the examiner respectfully submits that a limitation on a claim can broadly be thought as its ability to make a meaningful contribution to the definition of the invention in a claim. In other words, language that is not functionally interrelated with the useful structure/apparatus, or properties of the claimed invention will not serve as a limitation. See *In re Gulack*, 217 USPQ 401 (CAFC 1983), *Ex parte Carver*, 227 USPQ 465 (BdPatApp&Int 1985) and *In re Lowry*, 32 USPQ2d 1031 (CAFC 1994) where language provided certain limitations because of specific relationships required by the claims, (“multiple user session corresponds to a chat room” are not functionally interrelated to make-up said claimed apparatus; the cited reference’s system/apparatus are for multiple users).

It would have been obvious to one with ordinary skill in the art at the time of the invention to suggest that a combination of Bro, and Foladare et al.’s apparatus would be used in an environment such as a multiple-user session corresponds to a chat room for an advantage of exchanging opinions about a subject by concerned parties.

10.3. As to claim 3: It is rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), in view of Foladare et al. (US Pat. 6,343,115).

The rationales and references for a rejection of claim 2 are incorporated.

Bro also discloses that multimedia information comprises voice/music information (see Bro, col. 54 lines 8-34).

10.4. As to claims 4: It is rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), in view of Foladare et al. (US Pat. 6,343,115), and further in view of Barbara et

al. (US Pat. 5,926,789).

The rationales and references for a rejection of claim 3 are incorporated.

Bro and Foladare et al. do not expressly disclose about an apparatus having multimedia music tracks.

However, Barbara et al. teach that feature (see Barbara et al., col. 6 lines 1-14 wherein “an audio track” may include a musical/multimedia track).

It would have been obvious to one with ordinary skill in the art at the time of the invention to combine Bro, Foladare et al. and Barbara et al. to define communicate information are also music tracks because Barbara et al., define a location to retrieve a specific music which is implemented in Bro and Foladare et al.’s systems (the examiner notes that the “printed material” as “music track” is claimed here instead of information track - which making-up structures for this apparatus).

10.5. As to claim 5: It is rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), Ellis et al. (PGPUB-DOCUMENT-NUMBER: 20030188313), in view of Foladare et al. (US Pat. 6,343,115), in view of Barbara et al. (US Pat. 5,926,789), and further in view of Aktas et al. (US Pat. 6,459,776).

The rationales and references for a rejection of claim 4 are incorporated.

Bro, Ellis et al., and Foladare et al. do not expressly disclose a first mailbox and a second mailbox in their apparatus.

However, Aktas et al. teach those features (see Aktas et al., claim 15).

Foladare et al. do not expressly disclose about a navigating menu.

However, Ellis et al., or Barbara et al. teach that feature (see Ellis et al., Fig.19; or see Barbara et al., col. 6 lines 21-30, wherein a user can make an on-screen selection with given menu).

It would have been obvious to one with ordinary skill in the art at the time of the invention to combine Bro, Ellis et al., Foladare et al., Aktas et al., and Barbara et al. to generate an apparatus having a navigating menu and different mailboxes because this would give flexible selections for a user, and also a capability of easy, and providing a comfortable navigating a menu to a user for a selection.

10.6 As to claims 6-7: They are rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), Ellis et al. (PGPUB-DOCUMENT-NUMBER: 20030188313), in view of Foladare et al. (US Pat. 6,343,115), in view of Barbara et al. (US Pat. 5,926,789), and further in view of Aktas et al. (US Pat. 6,459,776).

A. Re. to claim 6: The rationales and references for a rejection of claim 5 are incorporated.

Ellis et al., Foladare et al., Barbara et al., and Aktas et al. do not expressly disclose an apparatus wherein inputs comprise artist name, album name, and type of music of a music track.

However, these claimed differences are only found in the non-functional descriptive material and are not functionally involved in the claimed “apparatus” recited. The artist name, album name, and type of music of a music track would be “information” regardless of what kind of specific data. Thus, this “descriptive material” limitation will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use Bro, Ellis et al., Foladare et al., Barbara et al., and Aktas et al. to input any type of data or any type of content because such data does not functionally relate to the apparatus claimed (not changing a function of “inputting” in the claimed structure), and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

It would have been obvious to one with ordinary skill in the art at the time of the invention to understand that the combination of Bro, Ellis et al., Foladare et al., Barbara et al., and Aktas et al. would generate an apparatus with structural components as claimed because a limitation on a claim can broadly be thought as its ability to make a meaningful contribution to the definition of the invention in a claimed structure.

B. As to claim 7: This claim is rejected on obviousness as claim 6 because claimed music tracks contain non-functional descriptive material for an apparatus claim (i.e., a specific album/an album’s name); besides, a music track can be well-known represented by a song in an album because this defines a music track, or a song.

10.7. As to claims 9-10, and 12-13: They are rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), Ellis et al. (PGPUB-DOCUMENT-NUMBER: 20030188313), in view of Foladare et al. (US Pat. 6,343,115), in view of Barbara et al. (US Pat. 5,926,789), and further in view of Aktas et al. (US Pat. 6,459,776).

The rationales and reference for a rejection of claims 7-8 are incorporated.

Bro, Ellis et al., and Foladare et al. teach a structural system in that a command controls/instructs a telephony platform (e.g., see Foladare et al., Fig.1).

Bro, Ellis et al., and Foladare et al. do not expressly disclose about a “purchase” command instructs said telephony platform to have a copy of said album downloaded/mailed to a user’s address.

However, executing a purchasing command “to have a copy of said album mailed to a user’s postal address” is an intent of use of claimed apparatus, thus this phrase contains a well-known limitation which is not an inventive concept. It would have been obvious to one with ordinary skill in the art at the time of the invention to combine Bro, Ellis et al., Foladare et al., Aktas et al., and Barbara et al. to generate Foladare et al.’s system with an intend of use as “to have a copy of said album mailed to a user’s postal address” because this would be merely a specific application of a user that is already well-known.

10.8. As to claim 14. It is rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), in view of Foladare et al. (US Pat. 6,343,115), and further in view of Barbara et al. (US Pat. 5,926,789).

The rationales and reference for a rejection of claim 4 are incorporated.

Bro or Foladare et al. do not expressly disclose that about a multimedia command is a save command, wherein said first music track corresponds to said selected multimedia portion, wherein, after selecting said first music track, said user saves first data corresponding to said first music track in a user memory portion coupled to said at least said first telephony platform by inputting said save command, and wherein said user memory portion is assigned to said user.

However, claiming that “a command is a save command” would be obvious for that claimed apparatus because cited references’ structures are capable to perform “a save command” which is a fundamental feature for most computer’s applications (these cited references do not

necessarily spell-out); further Bro obviously performs a saving after selecting which read-on the claimed action of “wherein, after selecting said first music track, said user saves first data corresponding to said first music track in a user memory portion coupled to said at least said first telephony platform by inputting said save command, and wherein said user memory portion is assigned to said user” (see Bro, col. 39 lines 56-65, and col. 57 line 64 to col. 58 line 3).

It would have been obvious to one with ordinary skill in the art at the time of the invention to combine Bro, Foladare et al., and Barbara et al. because their combinations have all structural components that make-up the claimed apparatus; cited references’ apparatus would definitely perform a save command.

10.9. As to claims 8, 11, and 15-19: They are rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US Pat. 5,722,418), in view of Foladare et al. (US Pat. 6,343,115), in view of Barbara et al. (US Pat. 5,926,789), in view of Ellis et al. (PGPUB-DOCUMENT-NUMBER: 20030188313), and further in view of Kelkar et al. (US Pat. 6,182,128).

The rationales and references for a rejection of claims 2, and 14 are incorporated.

A. As to claims 15-17: Bro, Foladare et al. and Barbara et al. do not expressly disclose that first data are music data/pointer data of a first music track.

However, Kelkar et al. disclose that music data are indexed (by music tracks); therefore, first track can be used as a pointer for retrieving - (see Kelkar et al., col. 4 line 55 to col. 5 line 4).

It would have been obvious with one of ordinary skill in the art to combine Bro, Foladare et al., Barbara et al., Ellis et al., and Kelkar et al. to suggest that first music data are belongs to a first music track because the order of input data are maintained with the order of track for easy

recognition to users; furthermore, this “order” is a non-descriptive material for an apparatus claim that does not contribute to a physical structure of that claimed apparatus; similarly, additional save commands can be used for additional music tracks – this is obvious information created by a programmer’s repetitions.

B. As to claims 8, 11, and 18-19: These apparatus claims contain multimedia command, purchasing commands.

The rationales and references for obviousness rejection or claim 17 are incorporated.

Ellis et al., suggest a selection to purchase a particular object/movie channel (see Ellis et al., Fig.26).

Claim 19 comprises a purchasing command and a telephony platform (please note that the following claimed language does not contribute much weight – as a proper limitation of this “apparatus” claim - because it comprises an action/step/function not comprising “a physical component” that make up the claimed structural apparatus: “instructs said at least said first telephony platform to have a copy of said customized album mailed to a postal address of said user or downloaded to a computer network address of said user”).

These claims are rejected on obviousness as claim 6 above, because claiming a non-functional descriptive material in an apparatus claim, and the act of “inputting data” is obvious for any e-commerce transaction (e.g. a multimedia command is a purchasing command); furthermore, the actions of saving, selecting are merely functional descriptive materials that not contributing additional structural components to limiting an apparatus claim. Cited references teach apparatus that are capable to perform these claimed functions.

10.10. As to claim 20: It is rejected under 35 U.S.C. 103(a) as being unpatentable over Bro(US Pat. 5,722,418), Ellis et al. (PGPUB-DOCUMENT-NUMBER: 20030188313), in view of

Foladare et al. (US Pat. 6,343,115), in view of Barbara et al. (US Pat. 5,926,789), and in view of Kelkar et al. (US Pat. 6,182,128).

The rationales and reference for a rejection of claim 17 are incorporated.

Bro, Ellis et al., Foladare et al. and Barbara et al. do not expressly disclose that a multimedia command comprises a radio playback command (please note that for a proper limitation of this “apparatus” claim, the following claimed language does not contribute much weight because it comprises an action/step/ function not being “a structural components” that make up the claimed apparatus: “and wherein said at least said first telephony platform sequentially outputs said saved tracks to said access device in response to said radio playback command”.

However, Kelkar et al. suggest that playback actions (see Kelkar et al. col. 6 lines 22-35); applicants claim an apparatus with a capability of receiving a command (e.g. a play/playback command for selected songs), and cited references teach about receiving/performing this play or playback command.

It would have been obvious with one of ordinary skill in the art to combine Bro, Ellis et al., Foladare et al., Barbara et al., and Kelkar et al. to suggest a platform that playback upon receiving commands from a user; Kelkar et al. further teach about radio-button functions as convenient and remote controllable features of users.

10.11. As to claims 21-24: They are rejected under 35 U.S.C. 103(a) as being unpatentable over Bro(US Pat. 5,722,418), Ellis et al. (PGPUB-DOCUMENT-NUMBER: 20030188313), in view of Foladare et al. (US Pat. 6,343,115), further in view of Stokes (US Pat. 4,870,515).

The rationales and reference for a rejection of claim 2 are incorporated.

A. As to claim 21: Bro, Ellis et al., or Foladare et al. do not expressly disclose that a multimedia command comprises a forwarding command, or jumping to different selections (this is the examiner's interpretation), after all this is just a capability to receive a command.

However, Stokes teaches that feature (Stokes disclose, "Also shown are appropriate control push buttons 70 for effecting play, record, fast forward, and pause modes, and a battery compartment 72", and Stokes also discloses: "When a particular *music track* is selected, the circuit 110 causes the deck 36 or player 40 to fast-forward until the position data agrees with the counted pulses provided from the pulse circuit 132" (according to a proper limitation of this "apparatus" claim, the following claimed language does not contribute much weight because it comprises an action/step not "physical components" that make up the claimed structural apparatus: "a telephony platform forwards a selected multimedia portion to a second access device of a second user in response to a forwarding command". The examiner respectfully submits that this claim's limitation is merely actions that are within capabilities of Ellis et al. and Foladare's systems. Further, Stokes teaches an apparatus to perform a forwarding command in above-cited paragraph.

It would have been obvious to one with ordinary skill in the art at the time of the invention to combine Bro, Ellis et al., Foladare et al. and Stokes to receive a forwarding command to Ellis et al., Foladare et al. 's platforms to process desired actions (e.g., receiving/performing a forwarding command as in claim) because Bro, Ellis et al. and Foladare et al.'s apparatus have interactive capabilities to perform such a claimed function.

B. As to claim 23: Stokes also teaches an apparatus comprises a structure to perform forwarding command.

It would be obvious to one with ordinary skill in the art at the time of the invention to combine Bro, Ellis et al., Foladare et al. and Stokes to receive a forwarding command to

Foladare et al. ‘s platform to process because claim 23’s language should be distinguished from cited prior art in terms of structure rather than function. See *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). When interpreting functional language, if the cited prior art is capable of performing the claimed function “even if not directly disclosed”, it anticipates. *In re Schreiber*, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

C. As to claims 22, and 24: Foladare et al. also obviously teach a system/an apparatus that having a distribution list (merely a non-functional descriptive material, just information), and obviously including/having claimed capabilities of “wherein said second user is part of a distribution list of a plurality of recipient users, and wherein said distribution list has been created by said user and stored in said at least said first telephony platform prior to inputting said forwarding command”); (please note that the above claimed language does not contribute much weight because it comprises an action/step not “a physical component” that make up the claimed apparatus (i.e., requiring structures)).

It would have been obvious to one with ordinary skill in the art at the time of the invention to combine Bro, Ellis et al., Foladare et al. and Stokes to receive a forwarding command to Foladare et al. ‘s platform to process because claimed “a distribution list of a plurality of recipient users, and wherein said distribution list has been created by said user and stored in said at least said first telephony platform prior to inputting said forwarding command” are functions that Foladare and Stokes’ system would be able to performed.

(11) Response to Argument:

A. The examiner respectfully summits that Bro disclose what the applicants claim in independent claims 1, 59, and 60: See Bro, col. 14 lines 35-41: FIG. 1 shows a client (50) uses a telephone platform (comprising a TELEPHONE NETWORK 24, and DIGITAL/TELEPHONE TONE SIGNAL CONVERTER 18) to interactively communicate with a COMPUTER 16; see

Bro, col. 17 line 66 to col. 18 line 7 Bro provides customized “narrow-cast” (Bro, col. 20 lines 11-21) wherein customized broadcasts can be responded to by individual patients/subscribers, utilizing multimedia information (i.e., an interactive videodisc system 54 comprising a videodisc player/CD-ROMs 56)

In the following paragraphs, the examiner would like to present his position against what the applicants claim:

B. For independent claims 1, 59, and 60: The applicants claim an apparatus that can store multimedia information, comprising a telephony platform and a storage location; wherein that apparatus received specific commands (i.e., commands for select a song, command for purchase, etc.)

The apparatus that was used in the cited reference doing the same thing as what interpreted above (please remember that cited references meet what were claimed); the claimed limitations are taught by Bro.

C. The examiner respectfully disagrees about the assertion: “An audio tract alone does not teach a music track”; the position of the examiner simply is: merely recording a sound track (Bro, Fig.2B teaches “PLAY CLIENT’S INSTRUCTION MESSAGE”, “PLAY MOTIVATION MESSAGE(S) OR ASK QUESTION”, and “PLAY CONCLUSION MESSAGE”; fig. 2A teaches “SORT DATABASE”, AND “MATCH FOUND?”, then “DIAL PHONE #”; fig.1 block 54 teaches ”INTERACTIVE VIDEODISK SYSTEM”, block 44 teaches “INTERACTIVE TELEVISION SYSTEM”, and block 58 “CELLULAR PHONES”.

The applicants argue that all words in a claim should be considered for a *prima facie* case of obvious rejection (see page 10, 6th para); the examiner already considered all words in

pending claims and pointing out that because the applicants claim an apparatus, structural limitations that made up that apparatus are what the examiner looks for.

The applicants argue that “Bro does not teach or suggest at least a first telephone platform “for receiving a command from a user’s access device and for generating a menu containing criteria options relating to at least one of a music track and a video track so that a user can make a selection” (see pages 10-11). The examiner disagrees since each and every structural features of claim were considered. Again, the examiner confirms that claims 1, 59, and 60 were rejected on 35 USC 103(a); NOT on 35 USC 102(b) as shown on page 9 of the Appeal Brief.

D. Note: Applicants submit an IDS on 6/30/2006 (after Final Rejection); after carefully review, this US Pat. 5,661,787 by Pocock teaches all features that was claimed in independent claim 1; i.e., Pocock teaches an apparatus for storing multimedia information, comprising: a telephony platform – i.e., a touch tone telephone 1030 communicates to a telephone interface 1020 of system 1025 of FIG.1; that telephone platform generates a menu of a music track for a user to select (see Pocock, col. 2 lines 48-63).

- a storage location coupled to said first telephony platform, wherein said storage location stores said predetermined multimedia information (see Pocock, FIG.1 “DATA DESCRIPTION ARCHIVE FILE 1066).

E. It is reasonable that a modification of Bro’s invention would be apparent to those skilled in the art at the time of invention without departing from the scope and spirit of that invention because this application mainly claim the required components in order to perform interactive communication between a client and a provider, then downloading a selection. Although cited invention may be described in connection with specific preferred embodiments, it should be

understood that its limitations as disclosed should not be limited to such specific embodiments (a hospital/patient environment).

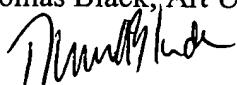
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

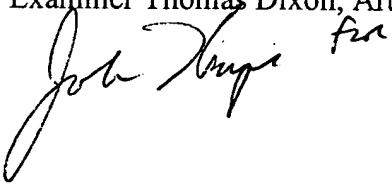

Cuong H. Nguyen

An appeal conference was held on July 26, 2006 with:

 SPE Thomas Black, Art Unit 3661



Primary Examiner Thomas Dixon, Art Unit 3639

 for

Mr. Daniel V. Williams (Reg. no. 45,221)
SUGHRUE MION, PLLC